
MEMORANDUM

TO: OCD STAFF AND GRANTEES
FROM: STEPHEN LATHOM, HOMEBUYER DEVELOPMENT SPECIALIST
SUBJECT: OPAL SYSTEM & PROFORMA UPDATES, HOMEOWNER & RENTAL REHABILITATION
DATE: FEBRUARY 1, 2006
CC:

The purpose of this memo is to outline several changes being made to the OPAL system that will affect both Homeowner and Rental Rehabilitation projects. The changes discussed in this memo will be implemented within OPAL sometime in the next week. Though not part of this memo, other changes to the system will take place at that time including the roll out of the Office of Supportive Housing and Homeless Initiatives own portal within the system. That portal will be called HALO—Homeless Assistance Link Online—and will be discussed in a separate memo to be published shortly.

An updated Excel version of the Homeowner and Rental Rehab proformas has been placed on OCD's internal network drive (staff should see S:/Forms/Proformas) and can be emailed to grantees who request it. The newest version of the file is named AGATE Proformas, Updated Jan. 23, 2006.

As with any other change to OPAL, while we have worked through these changes, tested them, and retested them, there will be glitches. So, I will thank you in advance for your patience as we work through any remaining bugs.

HOMEOWNER REHABILITATION: The changes being made to Homeowner Rehabilitation projects in OPAL relate primarily to two issues: 1) allowing grantees to charge un-itemized soft costs to activities in addition to allowable administrative funding (these changes implement the provisions outlined in Policy Bulletin #21 allowing 2% or 10% soft costs on projects depending on the funding source); and 2) generating mortgage documents between MSHDA and the homeowner for non-CDBG County Allocation homeowner projects.

Proforma Updates: Several lines have been added to the proforma while others have been deleted which has required the re-numbering of many other lines. Specific changes include:

- The former line A-4 that allowed HOME and MSHDA grantees to request soft costs has been deleted and replaced by new lines in Section B.
- A new line A-4 has been added to itemize any landscaping costs. Policy Bulletin #10 allows grantees to invest up to \$1,000 for landscaping on Homeowner Rehabilitation projects. The funds spent are not included in the minimum lien shown on line B-20. County Allocation grantees are not required to include the cost of landscaping (up to \$1,000) in the liens with the homeowners.
- Line B-14 now represents the activity setup before the inclusion of the un-itemized soft costs.

- Line B-15 calculates and shows the maximum amount of soft costs that can be charged to an activity based upon the initial setup amount on line B-14. Soft costs are limited to 10% of the total project costs for HOME and MSHDA funded projects activities, while CDBG funded projects will allow only 2% of the total activity setup for soft costs.
- On line B-16, grantees will enter the amount of un-itemized soft costs they propose to charge to the project. Grantees may elect to charge less than the total amount of un-itemized soft costs or none at all. This will be particularly true for projects where the additional soft costs may trigger Lead Based Paint (LBP) abatement requirements.
- Line B-20 represents the minimum mortgage loan expected of the homeowner. For liens between MSHDA and the homeowner, this figure will feed directly into the loan documents prepared by the system. County allocation grantees may choose to either forgive or to include the lead hazard remediation costs and the landscaping costs in the homeowner's lien. While MSHDA policy allows grantees to include the costs associated with lead and landscaping in the liens, very few grantees choose to do so.
- Line B-17 shows the "Total Setup" and represents the non-administrative funds that will be used from the grant for the activity.
- Line D-4 will return a "No Go" if the soft costs requested exceed the soft costs allowable.
- Line D-5 evaluates whether or not the project is within the project funding limits. MSHDA funds may be used to pay for up to \$25,000 of project hard costs. NOTE: Neither the \$10,000 allowed for LBP testing and remediation, nor the un-itemized soft costs are included in the \$25,000 limit. If the project exceeds the limit, a "No Go" will be returned.
- Line E-3 has been eliminated.

Activity Tracking Checklist Updates: The following changes do not apply to CDBG funded County Allocation projects. All other Homeowner Rehabilitation projects, including Homeowner Rehabilitation projects (or activities) funded through the Housing Resource Fund and any HOME funded County Allocation grants, the checklist has been updated to guide the grantee through the preparation of mortgage loan documents between MSHDA and the homeowner. Additionally, the activity tracking checklists also contains new steps in which CD Specialists record the receipt of various mortgage documents.

Future Advance Mortgages: For many years, agencies administering Homeowner Rehabilitation grants have struggled with the homeowner liens, specifically, when should the liens be recorded? If they file the mortgages upon closing to protect the lien position they may be required to modify the lien should they experience cost overruns and change orders. If they hold the mortgage documents until project completion they run the risk of subsequent liens taking priority to theirs.

To address this problem, Grantees preparing loan documents through OPAL will now use a Future Advance Mortgage for Homeowner Rehabilitation projects. A Future Advance Mortgage allows a lender to secure a loan up to a stated maximum principal balance. Most home equity lines of credit are, in fact, Future Advance Mortgages.

How does it work? At the beginning of a project, after the activity has been setup and approved by MSHDA, grantees will prepare a Future Advance Mortgage that places a lien for "up to" \$25,000, which is the program

limit. A Note will also be prepared for the actual amount of the loan, for example \$10,000. Both of these documents will be signed at the same closing. If a subsequent \$2,000 change order results in an increase to the loan amount, the homeowner needs only sign a new Note bringing the total loan balance to \$12,000. Notes are not recorded, and the repayment is limited to the amount shown on the most recently executed Note.

Within OPAL, the completion of these documents has been streamlined. Most of the information needed for the creation of loan documents is already contained within the system so forms will be auto-filled, thereby reducing both the administrative burden for grantees and the incidence of errors. Grantees need only complete the date on which the initial loan closing will take place, the county in which the property is located, and the name of the grantee staff member filling out the document. To complete the Note, the grantee only needs to enter the date the Note is being signed.

After the grantee has completed and saved the Mortgage and Note, using the “View PDF” function the grantee should print the documents for the owners’ signature(s). While the grantee should keep copies of all documents in the project file, a copy of the executed Mortgage should be sent to the CD Specialist while the Original Mortgage is forwarded to the County Register of Deeds for recording. The Original Note as well as the Originals of all subsequent Notes should be forwarded to the CD Specialist.

Subsequent Loan Modifications: The Activity Tracking Checklist is now dynamic. After the Mortgage and initial Note are completed, if revisions to an activity result in a change to the “minimum mortgage” on line B-20 of the proforma, the OPAL system will automatically add two checklist items—one prompting the grantee to complete the updated Note; and a second prompting the CD Specialist to indicate receipt of the Original signed version of that Note. These two lines will be added to activity checklist each time a change order or cost overrun affects the Line B-20, and therefore if an activity goes through several change orders, there will be several sets of these lines added to the activity tracking checklist.

RENTAL REHABILITATION: The changes to the Rental Rehabilitation projects in OPAL are primarily related: 1) allowing grantees to charge un-itemized soft costs to activities in addition to allowable administrative funding (these changes implement the provisions outlined in Policy Bulletin #21 allowing 2% or 10% soft costs on activities depending on the funding source); and 2) clarifying the amount of required liens on Rental Rehabilitation projects to address confusion observed among staff and grantees.

Proforma Updates: Several new lines have been added to the proforma resulting in the renumbering of several existing lines on the proforma. Specific changes include:

- The former line A-6 that allowed HOME and MSHDA grantees to request soft costs has been deleted and replaced by new lines in Section B.
- Line B-10 now represents the activity setup before the inclusion of any un-itemized soft costs.
- Line B-11 calculates and shows the maximum amount of soft costs that can be charged to an activity based upon the initial setup amount on line B-14. In HOME and MSHDA funded activities, soft costs of up to 10% of total project costs may be charged while in CDBG funded activities allow soft costs equaling 2% of the total setup.
- On line B-12, grantees will enter the amount of un-itemized soft costs they propose to charge to the project. Grantees may choose not to charge un-itemized soft costs or charge less than the maximum

amount allowed. This will be particularly true for projects where the additional soft costs may trigger Lead Based Paint (LBP) abatement requirements or extend the HOME compliance period.

- Line B-13 shows the “Total Setup” and represents the non-administrative funds that will be used from the grant for the activity.
- Line B-16 represents the minimum mortgage loan expected of the rental property owner. This amount will always be equal to the total amount of the setup and may increase prior to completion if change orders result in an increase in the activity setup. Along with this change, the Office of Community Development is making minor policy changes to eliminate some differences between Rental Rehabilitation Programs funded by various sources (HOME, CDBG, or MSHDA funds). A discussion regarding this change is outlined in the Q&A below.
- Line C-8 will return a “No Go” if the soft costs requested exceed the soft costs allowable.
- Line C-10 evaluates whether or not the activity is within the funding limits. MSHDA funds may be used to pay for up to \$14,999 or \$25,000 of project (activity) hard costs. NOTE: Neither the \$10,000 allowed for LBP testing and remediation, nor the un-itemized soft costs are included in those limits. For projects that fall above the \$14,999 limit but below the \$25,000 limit, a result of “Only if Downtown-NPP” will be returned since MSHDA policy allows the \$25,000 limit only in targeted downtown and neighborhood revitalization projects. If the project exceeds the \$25,000 limit, a “No Go” will be returned.
- A new compliance check has been added on line D-9. This line checks to see that the owner’s contribution to the project is, at a minimum, equal to 25% of the project cost before un-itemized soft costs are added into the total project.
- The calculation for line D-3 has been modified. It now evaluates the owner’s share of the cost before any un-itemized soft costs were added to the project. Line D-2, on the other hand, calculates the percentage of the total project cost, including un-itemized soft costs, paid for by the property owner.
- Line D-4 has been deleted.

QUESTIONS AND ANSWERS

- Q:** We have several in progress projects that are almost done. Will these changes affect them?
- A:** The proforma changes will apply to all projects within OPAL, both “new” and “old.” The activity tracking checklist changes (for non-CDBG County Allocation Homeowner Rehabilitation activities) will only affect projects initiated in OPAL after the changes are implemented.
- Q:** Can we go back and charge un-itemized soft costs to open projects that were initiated in OPAL prior to these updates?
- A:** Yes, grantees with open projects in OPAL may choose to charge un-itemized soft costs to those projects provided that the projects are, in fact, still “in progress” and that the grant has available funding to accommodate the increased setup amount. Grantees should be aware, however, that

adding to the setup on certain projects could have negative consequences. For example, charging un-itemized soft costs to a HOME funded Rental Rehabilitation project could push the setup over \$14,999 per unit and require a 10-year affordability period. Additionally, charging un-itemized soft costs on other projects—both Homeowner and Rental—could require LBP abatement. Grantees should be particularly mindful of these two compliance areas when choosing whether or not to charge un-itemized soft costs to existing “in progress” activities.

Q: Should we record each version of the Homeowner Rehabilitation Note to make sure the Register of Deeds Office shows the actual loan balance?

A: No. Notes should not be recorded. In reality, the amount of a mortgage rarely reflects the actual balance of a loan. For example, your mortgage holder does not record a mortgage revision each month when you make a payment that reduces your principal balance. As discussed above, Future Advance Mortgages are regularly used in the conventional lending market for home equity lines of credit where the amount of debt may be variable.

Q: When should we have the homeowner sign updated Notes?

A: Ideally, a revised proforma should be submitted and approved before a change order is authorized. Additionally, at the same time as, or before the change order is officially authorized, the homeowner should sign the updated Note for the proper amount based upon the current proforma. While most homeowners would sign the Note anyway regardless of the timing, once the additional work is authorized and paid for, it could be difficult to get the needed signatures.

Q: We revised a project and have to do a new Note. Should I date it the same as the original Mortgage?

A: No, any subsequent Note triggered by changes to the activity should be dated on the day the owner(s) actually sign the new Note.

Q: Does our County Allocation program have to use these new mortgage documents?

A: No, these documents were specifically written to be between MSHDA and the Homeowner. Our Legal Division does not provide contracts between third parties, i.e. between your county and a homeowner. The Office of Community Development has often recommended that County Allocation grantees consider using Future Advance Mortgages; you should work with your own counsel to develop mortgage documents for use in your program.

Q: Why is MSHDA changing the lien requirements for rental rehab projects? Previously we were allowed to forgive some cost items like Lead Based Paint (LBP) and landscaping immediately without ever including these costs in the lien.

A: While the Office of Community Development previously allowed immediate forgiveness of LBP and landscaping costs for activities funded with CDBG or MSHDA funds, the HOME program very clearly requires that the entire amount of federal assistance be included in the lien. MSHDA found that many HOME funded grantees mistakenly forgave costs that should be included in the lien. Adding to the confusion are several other differences between the requirements applied to Rental Rehabilitation projects depending on funding source.

Since the entire amount of assistance is ultimately forgiven, we concluded that applying the HOME requirements related to the amount of the lien to all Rental Rehab projects would not negatively

affect on the marketability of the program. The change would however, reduce the number of non-compliant HOME projects, reduce programming complexity with the OPAL system, and allow both staff and grantees to focus attention on the differences between funding sources that appreciably affect program viability—such as allowing market rate units in CDBG funded Rental Rehabilitation Projects.

ADDITIONAL QUESTIONS: Grantees should contact their CD Specialist with any additional questions while OCD staff can contact either Mary Cook or myself with other questions.